

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

NANCY A. DUNN)	
Claimant)	
VS.)	
)	
C & L COMPANIONS)	Docket No. 189,018
Respondent)	
AND)	
)	
INSURANCE CO. OF NORTH AMERICA)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Claimant appeals from an Award entered by Administrative Law Judge Jon L. Frobish on October 4, 1996. The Appeals Board heard oral argument May 28, 1997.

APPEARANCES

Claimant appeared by her attorney, James B. Zongker of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Vincent A. Burnett of Wichita, Kansas. The Kansas Workers Compensation Fund appeared by its attorney, Edward D. Heath, Jr., of Wichita, Kansas.

RECORD AND STIPULATIONS

The Appeals Board (Board) has reviewed the evidence presented to the Administrative Law Judge (ALJ) as listed in the Award. The Board has also adopted the stipulations listed in the Award.

ISSUES

The ALJ denied claimant's application for benefits on the grounds that she had failed to establish that her injury arose out of and in the course of her employment. Claimant asks the Board to reverse that decision and to then make a finding as to the nature and extent of disability. Respondent asks the Board to affirm the decision by the ALJ. In the event the Board finds the injury did arise out of and in the course of employment, respondent argues the claim should be barred for failure to comply with notice requirements of K.S.A. 44-520. Respondent also argues that liability, if any, should be assessed against the Kansas Workers Compensation Fund (Fund).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing and weighing the evidence and after considering the arguments made by the parties, the Board finds that the decision by the ALJ should be affirmed.

Claimant, who had undergone vascular surgery in her lower extremities in 1989, seeks to recover benefits for pseudoaneurysms diagnosed in 1993. Claimant has a history of circulatory problems. Claimant alleges that the pseudoaneurysms were caused, aggravated, or accelerated by lifting patients in the course of her employment for respondent.

Claimant testified she felt a tearing in her right and left groin while assisting a patient from a recliner to a wheelchair on October 11, 1993. She continued to work through October 25, 1993, and testified the condition worsened.

Three physicians testified and gave opinions on the key issue, namely the connection, if any, between claimant's work and the pseudoaneurysms. James Smith, D.O., an internist who specializes in treating vascular conditions, stated his opinion that the lifting at work aggravated her previous vascular condition. He could not say that the condition did not exist prior to the lifting incidents at work. He also testified that his records do not mention any specific event when claimant initially saw him in October of 1993.

Two physicians reached the opposite conclusion. Douglas J. Milfeld, M.D., testified that he is board certified in thoracic and general surgery. He performed the surgery on claimant in 1989 and an additional procedure for hardening of the arteries in her neck in 1992. He also saw her and performed surgery for the pseudoaneurysm on the left in the fall of 1993 and on the right in April 1994. According to Dr. Milfeld, the development of a

pseudoaneurysm is an ongoing process. He testified claimant's condition was not caused by work activities and that he could not state that it was either aggravated or accelerated by the work activities.

The third physician, Max T. Taylor, M.D., testified that the work activities did not cause, aggravate, or accelerate the pseudoaneurysms. As indicated, claimant testified to a tearing or a pulling sensation while lifting a patient. Dr. Taylor testified that the tissues involved in the pseudoaneurysms did not have sensation and that the pulling claimant felt on October 11, 1993, would not have involved those tissues.

The ALJ found the testimony of Drs. Milfeld and Taylor more convincing. The Board agrees. The Board finds that claimant has failed to establish by a preponderance of the credible evidence that the vascular injuries suffered in 1993 arose out of and in the course of her employment.

AWARD

WHEREFORE, the Appeals Board finds that the Award entered by Administrative Law Judge Jon L. Frobish, dated October 4, 1996, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of June 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James B. Zongker, Wichita, KS
Vincent A. Burnett, Wichita, KS
Edward D. Heath, Jr., Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director